

CATHRYN A. GLESENER

MAY 20, 1958.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. MONTOLA, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. R. 6448]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6448) for the relief of Cathryn A. Glesener, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line 6, strike out the figures "\$70,031.38", and insert in lieu thereof "\$18,151.97".

PURPOSE

The purpose of the proposed legislation is to pay to Cathryn A. Glesener, of Underwood, Wash., the sum of \$18,151.97, with interest at 4½ percent from January 1, 1938, to the date of enactment of this bill, in full satisfaction and final settlement of all her claims against the United States for compensation arising out of (1) the damage caused to her leasehold rights in certain shorelands, located on the north side of and extending into the Columbia River near Underwood, State of Washington, caused by the United States in the construction of the Bonneville Dam, and (2) the damages sustained by her as a result of the destruction of her rafting and booming business at such leasehold property by the construction of the dam.

STATEMENT

This case involves a clear understanding of what the lumber business is in the Far West. In the area in the State of Washington in which this claim arises trees which are suitable for lumber are cut down in the forest and sawed into logs, which are loaded onto trucks and hauled to the nearest and most accessible point on the Columbia River, where they are collected behind a boom (a boom is a collection of logs tied

together end to end and spread out in the water to corral logs dumped in the river). These logs are formed into rafts and propelled by the current and with tugboats down the river to the sawmills where they are sawed into lumber.

From this area, about 100 miles inland from the Pacific coast, many million feet of lumber have been sawed. The wooded area involved here was north of the Columbia River, and prior to 1926 it was difficult to boom the logs, as no proper place existed where this could be done, preparatory to rafting.

In 1926 the claimant, having knowledge of the need of such a point on the Columbia River, leased from the State of Washington a tract of land on the north side of said river about 37 miles east of and above the point where the Bonneville Dam was constructed. This proved a very important project to the loggers and a most profitable business for the claimant. The leased area in question embraced a cove alongside the Columbia with plenty of room, and the logs were hauled down from the forests and unloaded there, where the fall was not severe enough to damage the logs when rolled from the trucks.

The logs were collected in this cove behind the boom where there was never more than 4 feet of water over the surface. The boom held the logs until formed into rafts and taken down the river. This boom around the cove proved to be the best location on the Columbia River for the collection of logs. The rafts of logs were taken to Portland, Oreg., and Vancouver, Wash., and other points lower down; and between the plant owned by the claimant and those cities there were but few sawmills, and these were small. The nearest log boom was at Stevenson, 25 miles west of the claimant's boom. The claimant's business was profitable until the time of the construction of the Bonneville Dam. The dam at first was to be placed at Warrendale, Wash., and the height was to be 54 feet, but the Army engineers changed this plan and located the dam 4 miles above Warrendale, at Bonneville, with a height of 72 feet.

As a result of this high dam, the water backed up and completely submerged the claimant's property. The water was so deep and rough on the claimant's property that booming was impossible. Consequently, this strategic point for the receipt of logs was utterly ruined.

The claimant made many improvements, such as a home and out-buildings, and trestles for the unloading of logs, and in the 81st Congress, by Private Law 477, Miss Glesener was paid for the damage to her property, with the exception of the value of her leasehold property, which constituted the facility for the booming of logs, and which turned out to be one of the most strategic points for collecting logs anywhere along the Columbia River. Furthermore, she was cut off from the use of this booming cove, not from the standpoint of profits, but from the value of the rental, which can be measured in dollars and cents.

The question before us now is, "What was the value of this log-booming enterprise at the time it was taken, and what was the value of the annual use of said property?"

Mr. Aard Ady, appraiser for the United States National Bank, of Portland, Oreg., made an appraisal and fixed the annual rental value of the booming arrangement at \$15,000. As to the value of the booming property itself, there is ample evidence in the files that private lumber interests were willing to pay from \$175,000 to \$225,000 for

the property when it was a going concern, and before it was submerged in water. The life of the leasehold was fixed by the appraiser at 25 years. At the rate of \$15,000 rental per year, this would amount to \$375,000. In the consideration of this case it is important to consider the following figures:

Minimum appraised value of leasehold at the time of the construction of the Bonneville Dam.....	\$175, 000. 00
The claimant claims a balance due her by the Government in the amount of.....	70, 031. 38
The Government now offers the claimant \$18,151.97, with interest at 4½ percent from Jan. 1, 1938, which to July 1, 1958, would aggregate the sum of.....	34, 897. 16

Miss Glesener's wharf and booming facility were constructed at a very desirable location on the north bank of the Columbia River on property leased by her from the State of Washington. She still holds a lease of this property and will continue to hold said lease.

By Private Law 477, 81st Congress, the Congress recognized the validity of the claim of Miss Glesener for the damages sustained by her as the result of the construction of the Bonneville Dam. But it has only partially paid her for such damages. Private Law 477 awarded to Miss Glesener compensation for only the following items:

For destruction of physical improvements.....	\$8, 391. 00
For depreciation in value of home, adjacent facilities and land associated with, but not a part of, the log booming and rafting facilities.....	14, 400. 00
For loss of business from 1935 to 1937.....	13, 650. 00
Subtotal.....	36, 441. 00
Interest at 4½ percent.....	20, 347. 56
Grand total.....	56, 788. 56

Through inadvertence that bill made no award to Miss Glesener covering the largest item of the damages sustained by her as the result of the construction of the Bonneville Dam; namely, the destruction of the value of her leasehold rights. The value of Miss Glesener's leasehold rights was destroyed, because the dam raised the water level 28 feet at the site of the claimant's wharf and booming facility and completely flooded such wharf and facility, making it impossible to carry on further business on her leased property. Furthermore, the building of the dam raised the water level of the river so high and created such a large body of water that the river was caused to become very rough adjacent to the shore of the claimant's leased property. Consequently, it was impossible to rebuild or carry on the rafting and booming of logs on such leased property.

It appears that the only portion of the award made by Private Law 477, 81st Congress, which may reasonably be considered as a part of the damages sustained by the claimant as the result of the destruction of the value of her leasehold rights, is the item in the amount of \$13,650 allowed "For loss of business from 1935 to 1937" (during the construction of the Bonneville Dam), plus 4½ percent interest thereon (i. e., \$13,650 plus interest in the amount of \$7,621.75, or \$21,271.75). The Department of the Army, however, in its report on this legislation contends that the sum of \$8,391 awarded in H. R. 477 "For destruction of physical improvements" (which the claimant had built on the leased property), plus 4½ percent interest thereon (i. e., \$8,391 plus interest in the amount of \$4,685.28, or \$13,076.28), should also be considered as a part of the value of the leasehold rights of the claimant.

These 2 items of \$21,271.75 plus \$13,076.28 aggregate \$34,348.03, and the Department recommends that the last mentioned sum be deducted from the amount which the Congress may determine to have been the fair value of the claimant's leasehold rights.

The Department of the Army in its report on this legislation concedes the fact that the claimant is justly and equitably entitled to recover damages on account of the destruction of her leasehold rights. However, the Army, in its report, calculates the claimant's damage by reason of the destruction of such leasehold rights upon a 15-year period. Calculated upon a 15-year period the Army finds that the leasehold was of the value of \$52,500. No reason is given for a calculation on a period of 15 years only. The claimant has held the lease since 1926. It has now been 24 years since the construction of the dam was started, and she still holds such lease. If the Army's theory of the value of the leasehold rights should be accepted upon a 20-year basis, then the claimant has sustained a loss in the amount of \$70,000. On the other hand, the value of the leasehold might reasonably be calculated on a 25-year basis, and on such a basis the value of the leasehold would be \$87,500.

The Department of the Army has recommended that Miss Glesener be compensated for the destruction of her leasehold rights in—

the sum of \$18,151.97, with interest at 4½ percent from January 1, 1938, to the date of enactment of this act.

This sum was arrived at by the Army by calculating the value of the leasehold upon a 15-year period at \$52,500, and deducting therefrom the aforementioned sum of \$34,348.03 (i. e., \$21,271.75, "For loss of business from 1935 to 1937", plus \$13,076.28, "For destruction of physical improvements"). The foregoing appraisal of the value of Miss Glesener's leasehold rights was arrived at by the Army upon an estimate that the annual average of logs boomed and rafted at her facility during the years from 1928 to 1931 was 7 million feet. Miss Glesener does not now have available her complete scaling records while she was operating her facility at Underwood, Wash., during the period from 1926 to 1934, as most of such scaling records have long since been lost. Miss Glesener had contracts with an average of 4 or 5 truckowners to transport logs to her wharf at Underwood, Wash., for booming and rafting. She recently located one of the original contracts in question, which she states is similar to other contracts made by her with other truckowners. This contract was made with one O. R. Myre under date of April 20, 1926, in which Mr. Myre contracted—

To furnish sufficient trucking equipment and labor to truck and deliver (at Miss Glesener's wharf on the Columbia River at Underwood, Wash.) at least 40,000 feet of merchantable timber per day, water scale, and after the year 1926 a minimum of 10 million feet per year merchantable timber, water scale * * *.

Miss Glesener has produced a telegram from another truckowner by the name of R. G. Osborn, dated May 27, 1926, which shows that she advanced \$300 to Osborn to trade in on a new truck, which he acquired for use in transporting logs to Miss Glesener's wharf. The telegram also shows that one Mathews was also transporting logs to Miss

Glesener's wharf at the same period of time. Miss Glesener states that during the same period she also had similar contracts with one Bevins and one Mackey who actually engaged in the hauling of logs to her wharf at Underwood, Wash.

According to the estimate of Ralph Walstrom, of the firm of Holbrook-Walstrom, property counselors and appraisers of Portland, Oreg., the leasehold interest of Miss Glesener was worth \$200,000 at the time work on the Bonneville Dam was commenced, and that "*a minimum of a 25-year life for the leasehold interest is not unreasonable.*" Duane Autzen, general manager of the Portland Lumber Mills, a large lumber manufacturing company of Portland, Oreg., has estimated that before the construction of the Bonneville Dam, the leasehold of the claimant was worth between \$175,000 and \$225,000; that had not such dam been constructed his company would have been interested in a purchase of such leasehold rights, and that with the past 10 years of regular production "*we could have paid you (Miss Glesener) a yearly rental of between \$10,000 and \$20,000*" for such leased property, "*or if it were for sale we could pay between \$175,000 and \$225,000.*" F. D. Hobi, logging manager of the St. Paul & Tacoma Lumber Co., Tacoma, Wash., estimated the damages sustained by Miss Glesener by reason of the destruction of the value of her leasehold rights in the aggregate amount of \$347,500.

In addition the evidence shows that prior to the construction of the Bonneville Dam Miss Glesener had a monopoly of the business of booming and rafting logs in the Underwood, Wash., area where her facility was located, which covered a wide territory with practically an unlimited supply of timber. The nearest booming and rafting facility was located at Stevenson, Wash., some 25 miles down the river and west of Underwood. Due to the condition of the terrain there was no other location in the Underwood area where another booming and rafting facility could be built until after the construction of the Bonneville Dam when, due to the raising of the pool level of the Columbia River above the dam, backwater was forced into the mouth of the White Salmon River (a small tributary of the Columbia River, immediately east of and adjacent to Underwood, Wash.), which raised the water level of the White Salmon sufficient for the establishment of a rafting and booming facility thereon. Prior to the building of the Bonneville Dam the water in the White Salmon River was so shallow that it was wholly impossible to boom and raft logs thereon. Upon the construction of the dam the claimant's facility, which was located upon her leasehold (which extended for a distance of 2,207.04 feet along the north bank of the Columbia River), became completely valueless. The Pacific Power & Light Co., realizing the need for and the commercial value of a booming and rafting facility in the Underwood area, thereupon established a log rollway on land owned by it near the mouth of the White Salmon River, which facility has since enjoyed the monopoly previously enjoyed by Miss Glesener.

The Columbia River Log Scaling & Grading Bureau, which has scaled all of the logs which have been rafted at the White Salmon rollaway facility, has certified that 484,823,491 feet of logs were scaled at said facility during the period from 1938 (after the completion of the Bonneville Dam) to 1957, inclusive, and that the gross earnings by said facility during that time amounted to the sum of \$569,727.94. According to all estimates the net earnings of the White Salmon roll-

away facility during the period in question were at least 50 percent of its gross earnings, which would result in net earnings of not less than \$284,863.97. It is reasonable to assume that the net earnings of Miss Glesener, who had a much superior rafting and booming facility, would have been that much during the period from 1938 to 1957, inclusive, had the Bonneville Dam not been constructed. It is also a reasonable deduction from the evidence that if Miss Glesener could have continued the operation of her booming and rafting facility after the construction of the dam on a competitive basis with the White Salmon facility, she should have earned at least one-half, if not much more, of the total earnings of both facilities. On the theory that she would have earned only one-half of the total net earnings of both facilities, her net earnings would have amounted to \$142,431.98 (one-half of \$284,863.97). In this connection, Duane Autzen, general manager of the Portland Lumber Mills, in a certificate furnished to Miss Glesener under date of September 3, 1952, stated:

*If you had your original site for rafting logs, * * * (you) would probably be doing 90 percent of the business in the Underwood district on account of the convenience of dumping in such site. [Italic supplied.]*

William C. Crittenden, of San Francisco, Calif., formerly the principal stockholder of the Express Building Co., in an affidavit executed on January 17, 1958, stated:

* * * that said corporation had large holdings of standing timber in the State of Washington, near the wharf belonging to Cathryn A. Glesener, located on the Columbia River at Underwood, Wash.; that he had personal knowledge of said holdings and of large stands of timber belonging to others in that vicinity; that the only facility in that area from which logs could be boomed and rafted was from the said wharf; that all timber cut by or for the account of said corporation, and large amounts of logs owned by other persons and concerns, were moved over said wharf until the same was removed; that at the time said wharf was removed, further large amounts of timber belonging to said corporation and to others in the vicinity of said wharf were still available for removal; that the logging scale sheets and other records of said corporation have long since been lost or destroyed.

The evidence hereinbefore referred to, as well as the other evidence in this case, including photographs made at the scene of the claimant's facility and the scene of the White Salmon rollway, support a conclusion that the value of the claimant's leasehold rights prior to the construction of the Bonneville Dam was substantially higher than the amount recommended by the Army in its report for the settlement of this claim.

The Department of the Army, upon a further consideration of this case, evidently recognizes the fact that the amount which it recommended for the settlement of this claim may be inadequate, for in a supplemental report, dated February 28, 1958, it stated:

The Department has long considered Miss Glesener's claim meritorious. The Department has no other sources available

for evidence to permit a more accurate and well-founded assessment of her damages. It is realized that the committee may have other and more reliable evidence, including Miss Glesener's further testimony, upon which it may better determine a fair result. *Should the Congress conclude that the Department of the Army's determination of damages is inadequate, the Department would have no objection to an increased award in this case.* [Italic supplied.]

The committee, after a careful consideration of all the facts and circumstances in this case, is of the opinion that the claimant is justly and equitably entitled to be compensated in a fair and reasonable amount for the destruction of the value of her leasehold rights for which she has not heretofore been compensated.

Resolving all doubts in favor of the Government, the committee is of the opinion that a fair, just, equitable, and final settlement of all claims of Miss Glesener against the United States may be effected by applying the Army's formula for the determination of the value of her leasehold rights, calculated upon a 15-year period, which will result in an award to her in the amount of \$18,151.97, with interest at 4½ percent from January 1, 1938. The award of a lesser amount would not constitute just compensation. The committee, accordingly, recommends that an award be made to the claimant in the sum of \$18,151.97, with interest at 4½ percent from January 1, 1938.

The favorable report and supplemental report of the Secretary of the Army on this legislation are attached hereto.

DEPARTMENT OF THE ARMY,
Washington, D. C., October 23, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 6448, 85th Congress, a bill for the relief of Cathryn A. Glesener.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Cathryn A. Glesener, of Underwood, Washington, the sum of \$70,031.38 in full satisfaction and final settlement of all her claims against the United States for compensation arising out of (1) the damage caused to her leasehold rights in certain shorelands, located on the north side of and extending into the Columbia River, near Underwood, Washington, caused by the United States Engineers in the construction of the Bonneville Dam, and (2) the damages sustained by her as the result of the destruction of her rafting and booming business at such leasehold property by the construction of said dam."

The Department of the Army would have no objection to the enactment of this bill if it should be amended as hereinafter recommended.

The construction of the dam at Bonneville, Oreg., was authorized by the following acts of Congress:

Act of August 30, 1935 (49 Stat. 1028, 1038):

"That the following works of improvement of rivers, harbors, and other waterways are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, in accordance with the plans recommended in the respective reports hereinafter designated and subject to the conditions set forth in such documents; and that hereafter Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and the supervision of the Chief of Engineers, except as otherwise specifically provided by Act of Congress:

* * * * *

"Columbia River, Oregon; construction of dam, ship lock, and works for the utilization of surplus power, at the site at Bonneville recommended in the report of the Chief of Engineers dated August 21, 1933".

Act of August 20, 1937 (50 Stat. 731):

"That for the purpose of improving navigation on the Columbia River, and for other purposes incidental thereto, the dam, locks, powerplant, and appurtenant works now under construction at Bonneville, Oregon and North Bonneville, Washington (hereinafter called Bonneville project), shall be completed, maintained, and operated under the direction of the Secretary of War and the supervision of the Chief of Engineers, subject to the provisions of this Act relating to the powers and duties of the Bonneville power administrator * * *."

On October 22, 1937, the Secretary of War canceled all permits for structures below the line of ordinary high water on the Columbia River above the Bonneville Dam. Included in this cancellation of permits was a permit issued in 1926 to the Oregon-Washington Lumber Co. (actually transferred to and held by Cathryn A. Glesener). This permit as initially issued stated in pertinent part:

"WAR DEPARTMENT

"NOTE.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized. It merely expresses the assent of the Federal Government so far as concerns the public rights of navigation. (See *Cummings v. Chicago*, 188 U. S., 410.)

"PERMIT

"UNITED STATES DIVISION ENGINEER OFFICE,
 "NORTHERN PACIFIC DIVISION,
 "Seattle, Wash., October 11, 1926.

"Oregon-Washington Lumber Co.,
 "Portland, Oreg.

"GENTLEMEN: Referring to written request dated September 21, 1926, I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of section 10 of the act of Congress approved March 3, 1899, entitled 'An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes,' you are hereby authorized by the Secretary of War, to construct log dump wharf and log boom in Columbia River, at Underwood, Wash., in accordance with the plans [enclosed] subject to the following conditions:

* * * * *

"(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the supervisor of New York Harbor, Army Building, New York City.

* * * * *

"(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of War, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of War, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the

watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of War may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

* * * * *

"By authority of the Secretary of War:

"W. J. BARDEN,

Colonel, Corps of Engineers, Division Engineer."

On November 2, 1937, the district engineer, Corps of Engineers, advised Miss Glesener:

"Reference is made to War Department permit, dated October 11, 1926, authorizing you to construct log-dump wharf and log boom in the Columbia River at Underwood, Wash.

"Upon the raising of the Bonneville Pool, this log-dump wharf and log boom will become an obstruction and menace to navigation. This is to advise you therefore, that under date of October 22, 1937, the Secretary of War revoked the above permit, and you are hereby ordered and directed to remove the log-dump wharf and log boom constructed under said permit not later than November 15, 1937, and upon your failure, neglect, or refusal to so remove said boom by the foregoing date, it will be removed by this Department pursuant to existing law.

"Please advise us immediately as to whether or not you will complete removal of the log-dump wharf and log boom in question by the date fixed. Receipt of this letter should be acknowledged on the attached form and returned in the enclosed self-addressed envelope for which no postage is required."

Upon receipt of advice from Miss Glesener's attorneys on December 7, 1937, that she had decided not to remove the structures, said structures were removed by the Corps of Engineers at the expense of the Government.

The construction of the Bonneville Dam by the United States was completed in 1938. The water level of the Columbia River above the dam was raised extensively by the dam, and when the basin was flooded in 1937, Miss Glesener's logging and booming facilities at Underwood were under water.

Calculations of the Corps of Engineers prior to the flooding of the basin above the dam and Department determination after the flooding indicate that "Miss Glesener's structures, if left in the river [after the flooding], would have constituted an unreasonable obstruction to navigation, extending as they did more than 600 feet out into the stream from the normal pool line and the top of the wharf being some 20 feet below the surface."

The United States Department of Agriculture, Forest Service, in explanation of the logging industry in this vicinity states (July 16, 1957):

"A considerable volume of logs are cut and hauled to the Columbia River from the Gifford Pinchot Forest and adjacent private land on the north side of the Columbia River in the general vicinity of Underwood, Wash. Logs which are dumped into the river must be assembled at booming grounds and if towed to sawmills at any distance from the point where the logs are placed in the river, they must be assembled

into rafts. Hence booming and rafting is an established and essential part of the logging industry in this vicinity."

In 1949, H. R. 3325 and S. 469, similar bills for the relief of Catherine A. Glesener, were introduced in the 81st Congress. These bills provided as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Catherine A. Glesener, of Underwood, Washington, the sum of \$126,811, in full satisfaction of her claims against the United States for compensation for (1) the destruction of a log wharf and boom on the north side of, and extending into, the Columbia River, near Underwood, Washington, by the United States Engineers in 1937 in connection with the construction of the Bonneville Dam; (2) losses incurred by reason of the depreciation in value of shore property, improvements, and facilities as a result of the destruction of such log wharf and boom; and (3) loss of earnings as a result of the destruction of such log wharf and boom and the inability of the said Catherine A. Glesener to further carry on her business by reason of the refusal of the War Department to grant her a permit which would have enabled her to reconstruct such log wharf and boom."

After the introduction of S. 469, Miss Glesener was requested by the Department of the Army to submit an itemization of the damages sustained by her for which in justice and equity she felt she was entitled to be awarded damages by special act of Congress. Thereafter Miss Glesener filed with the Department, through her attorney, a memorandum in which she set forth the items of damage sustained by her aggregating \$84,792. Her explanatory statement is as follows:

"WHAT DAMAGES SHOULD CLAIMANT BE PAID?

"Having established that a claim exists, the question remains, how much should Miss Glesener be compensated? Obviously such compensation must be reasonable and be the natural and probable result of the act of the United States in destroying her property and her business.

"It is conceded that the sum claimed in S. 469-H. R. 3325 of \$126,811 cannot be supported with reasonable certainty. That Miss Glesener was severely damaged is beyond question, however. A consideration of what should be paid should properly include the following elements:

"(a) Actual loss of wharf, road, and log boom.

"(b) Reduced value of her home and 90 acres of land.

"(c) Reduced value of her water line and system built as part of her home.

"(d) Actual loss of business for period 1935 to 1937, inclusive, while dam was being built.

"(e) Loss of prospective business after dam was built, had she been allowed to remain in business.

"(f) Costs of assembling material for claim with many trips to Washington from the west coast.

"(g) Interest on amount finally agreed upon.

"These elements will be dealt with separately as follows:

"(a) Actual loss of wharf, road, and log boom.

"Claimant's wharf and log boom and part of the road which she had constructed leading to the wharf were completely destroyed by the raising of the Bonneville Pool to 72 feet. Attached hereto as exhibit 11 is an estimate, submitted by a registered professional engineer showing that the cost of replacing this road, wharf, and log-boom installation, based on 1937 prices, would be \$8,391.96. It is felt that this item requires no further discussion and should be paid in full.

"(b) Reduced value of her home and 90 acres of land.

"(c) Reduced value of her water line and system built as part of her home.

"Claimant, in addition to the replacement cost of the physical facilities which were totally destroyed, is reasonably entitled to some amount to compensate her for the resultant damage to her shore property, improvements, and facilities as a result of the destruction of the log boom and wharf.

"Miss Glesener had a home situated on a tract of land owned by her containing 90 acres of valuable timberland, which home she had completely furnished. *In addition, Miss Glesener owned valuable water rights and a water supply system which the Assistant Supervisor of Hydraulics of the State of Washington estimates were worth, in 1941, approximately \$5,500 (exhibit 12).* [Italic added.] Prior to the construction of the Bonneville Dam, claimant's home had an appraised value of \$20,000 (exhibit 12A), together with said water rights and water systems. Subsequent to the building of the dam and the destruction of claimant's business by the United States, this property steadily declined in value until claimant was eventually able to find a buyer, which she did in 1945. Miss Glesener was forced to sell her home, property, and furnishings therein for \$5,000 (exhibit 13). This dwelling house and the water system were constructed by claimant for use in connection with the operation of her log wharf and boom, and while it is true that the total destruction of the latter did not destroy the availability of the home for living purposes, it nevertheless is obvious that with her business gone, the value of her home and fixtures inevitably suffered to some extent. No one could be found for years who wished to simply live in this part of the Northwest for reasons totally unconnected with the operation of any business.

"It is felt that the amount of compensation for the diminution in value of her home, 90 acres of land and her water supply system should be \$14,400, or the difference between its then value and what she was forced to sell it for in 1945.

"(d) Actual loss of business for period 1935 to 1937, inclusive, while dam was being built.

"The action of the United States in destroying claimant's property was a tortious one for which the authorities today generally recognize that prospective profits which are lost by the person injured which can be shown to be the natural and probable consequence of the tortious act may be recovered as an item of damages (15 American Jurisprudence, par. 149, 17 C. J., par. 112). With this principle established as a matter of law which the courts generally recognize, it is manifest that in a claim such as this, where equity is the primary consideration, there can be no question but that the loss of prospective profits is a proper element to be allowed. Moreover, there is not, nor can there be, any definite criteria for determining such anticipated

profits. At law, each court has its own criteria and it is recognized as desirable that there be a lack of definite rules for determining such profits on the theory that the 'greater certainty would be the certainty of injustice.'

"The construction of the Bonneville Dam was commenced by the United States in 1934, and completed in 1938. All booming operations were stopped during the years 1934-38, by reason of such construction which prevented the towing of log rafts to the mills which were all situated downstream from the Dam. In 1937, her facilities were destroyed. Clearly, the damage to claimant's business commenced some time during 1934, and the measure of her damages for the period 1934, to the end of 1937, was the amount of profit she would have made on every foot of logs boomed from the Underwood area during those years. It must be remembered that her's was the only logging and booming facility in this area until 1938 when the Pacific Power & Light Co. constructed a log rollway in the mouth of the White Salmon River just above claimant's property. The only records available show that for the years 1928, 1929, and 1931, an average of 7 million feet of logs per year were handled over claimant's wharf. The prevailing charge for booming and rafting in the Columbia River area at that time was \$1.25 per thousand feet log scale. Of this amount the cost of operation did not exceed 60 cents per thousand feet with a resultant profit of 65 cents per thousand feet of logs boomed.

"In view of the fact that construction operations commenced in 1934, it is considered fair and reasonable to omit that year in any calculation of profit lost by reason of construction of the dam and therefore the years 1935, 1936, and 1937, only will be used. By applying the existing profit of 65 cents per thousand feet of logs boomed to the average of 7 million feet for these 3 years, it is submitted that claimant's business sustained an actual loss of profits, which she had every right to expect to receive, in the amount of \$13,650.

"(e) Loss of prospective business after dam was built, had she been allowed to remain in business.

"By 1938, the Bonneville Dam was completed and the water level raised. As a consequence, the booming and rafting business in the Columbia River was revived and the Pacific Power & Light Co. commenced operation of a rollway at the mouth of the White Salmon River, a very short distance from where claimant's wharf and boom had been located. The volume of logs boomed in 1938, at this new site was over 4½ million feet. From that date to the present time the amount of logs boomed and rafted in the Underwood area has steadily increased until, in 1948, the Columbia River Log Scaling Bureau recorded 34,300,990 feet. This condition has more than borne out Miss Glesener's foresight in choosing the Underwood area as one particularly potential for the development of a log booming and rafting business. Had Miss Glesener been permitted to continue her booming and logging facilities at her ideal location on the river, the years 1938, through 1948, would have been very profitable ones for her. A fair appraisal of the profits which could have been expected during this period must, however, include a consideration of the possible increase in cost of operations. This is further indicated by the fact that the booming and rafting charge was increased from \$1.25 to \$1.50 per

thousand feet in this area. Whereas the rate of profit on booming and rafting had been 65 cents a thousand feet, it is felt that, to fairly reflect a possible rise in the cost of business operations, this figure should be reduced to 50 cents a thousand feet. In addition, the rise in the Columbia River backed water into the White Salmon River which river then became an available albeit a poor site for booming and rafting activities. The Pacific Power & Light Co. has been utilizing this site since 1938, and, in view of the greatly increased volume of logs brought out at this point, it must be assumed that competition would increase, and thus it is considered only fair and reasonable to say that, had Miss Glesener been allowed to remain in business, her operations would have been affected by this competition. By applying a 50-cent per thousand-foot profit figure to only 50 percent of the logs boomed in the Underwood area, the figure of \$48,351.50 is arrived at, which takes into consideration the possible rise in operating costs and the probable inception of competition. This figure is based upon the logs boomed at the mouth of the White Salmon River for the years 1938, through 1940, and 1942, through 1948, the years for which authentic figures are available from the Columbia River Log Scaling & Grading Bureau (exhibit 14).

"Claimant submits that to use the reduced figure of profit or 50 cents per 1,000 feet, and by applying that figure to only half of the actual logs boomed at this specific location where she was located, results in a fair and reasonable method of arriving at her loss of prospective profits subsequent to the construction of the Bonneville Dam.

"(f) Costs of assembling material for claim, with many trips to Washington from west coast.

"(g) Interest on amount finally agreed upon.

"Although claimant has actually spent several thousand dollars in travel expense as a result of the destruction of her property and business, she agrees to omit any such claims, if the above-mentioned amounts are found to be proper and are paid. The same for interest. Claimant is not attempting to get one dollar from the Government to which she is not entitled. That is why claimant frankly states that the amount contained in S. 469 and H. R. 3325 cannot be justified with reasonable certainty. Her expenses for years in trying to get favorable action on her claim and interest are examples of her willingness and desire to be fair about this claim. Her business was destroyed by the United States, and she has been forced to go deeply into debt to live since its destruction. For this she feels she should be compensated the reasonably ascertainable losses she has suffered. These amounts are as follows:

Destruction of wharf, road, and log boom.....	\$8, 391
Damages to home, facilities, and land.....	14, 400
Damages on account of loss of business from 1935 to 1937, inclusive, while the Bonneville Dam was under construction.....	13, 650
Loss of prospective business as a result of the construction of the Bonneville Dam.....	48, 351
Total.....	84, 792

"It is recommended that the bill be amended to provide payment of this amount to claimant and it is hoped that the War Department will feel that it can favorably report this amount to the Congress. As stated earlier, the position taken by the Department on the

question whether a strictly legal claim exists is doubtless a sound one. Equities do exist, however, and if the Department is as fair with claimant here, as she has tried to be in evaluating the amount of her damages, then they should report favorably on S. 469 and H. R. 3325."

The Department of the Army in its report to the chairman, Committee on the Judiciary, House of Representatives, dated August 19, 1949, on H. R. 3325, 81st Congress, a bill for the relief of Catherine A. Glesener, stated:

"The claimant contends that she sustained a considerable loss of profits in the years of 1934, 1935, 1936, and 1937 while the Bonneville Dam was under construction. It will be noted, however, that in her effort to obtain a settlement of her claim she has omitted any claim for damages on account of the loss of profits from her logging and booming business during the year of 1934, and that she only claims under this item of her claim damages on account of the loss of profits during the years of 1935, 1936, and 1937. Since the claimant has foregone any claim for the loss of profits from her business during the year of 1934, it is believed that the sum of \$13,650 claimed under this item is a conservative estimate of the profits she would have realized from her business for the years 1935, 1936, and 1937 had the dam not been under construction during those 3 years.

"The fourth and last item of Miss Glesener's claim is for the sum of \$48,351 for damages on account of the loss of prospective business from 1938 to 1948, inclusive, after the completion of the Bonneville Dam. In support of this item of her claim the claimant in her memorandum filed with the Department of the Army states:

'By 1938, the Bonneville Dam was completed and the water level raised. As a consequence, the booming and rafting business in the Columbia River was revived and the Pacific Power & Light Co. commenced operation of a rollway at the mouth of the White Salmon River, a very short distance from where claimant's wharf and boom had been located. The volume of logs boomed in 1938, at this new site was over 4½ million feet. From that date to the present time the amount of logs boomed and rafted in the Underwood area has steadily increased until, in 1948, the Columbia River Log Scaling Bureau recorded 34,300,990 feet. This condition has more than borne out Miss Glesener's foresight in choosing the Underwood area as one particularly potential for the development of a log booming and rafting business. Had Miss Glesener been permitted to continue her booming and logging facilities at her ideal location on the river, the years 1938, through 1948, would have been very profitable ones for her. A fair appraisal of the profits which could have been expected during this period must, however, include a consideration of the possible increase in cost of operations. This is further indicated by the fact that the booming and rafting charge was increased from \$1.25 to \$1.50 per thousand feet in this area. Whereas the rate of profit on booming and rafting had been 65 cents a thousand feet, it is felt that, to fairly reflect a possible rise in the cost of business operations, this figure should be reduced to 50 cents a thousand feet. In addition, the rise in the Columbia River backed water into the White Salmon River which river then became an available albeit a poor site for booming and rafting activities. The Pacific Power & Light Co. has been utilizing this site since 1938, and in view of the greatly increased

volume of logs brought out at this point, it must be assumed that competition would increase, and thus it is considered only fair and reasonable to say that, had Miss Glesener been allowed to remain in business, her operations would have been affected by this competition. By applying a 50-cent per thousand-foot profit figure to only 50 percent of the logs boomed in the Underwood area, the figure of \$48,351.50 is arrived at, which takes into consideration the possible rise in operating costs and the probable inception of competition. This figure is based upon the logs boomed at the mouth of the White Salmon River for the years 1938, through 1940, and 1942, through 1948, the years for which authentic figures are available from the Columbia River Log Scaling and Grading Bureau.

'Claimant submits that to use the reduced figure of profit or 50 cents per 1,000 feet, and by applying that figure to only half of the actual logs boomed at this specific location where she was located, results in a fair and reasonable method of arriving at her loss of prospective profits subsequent to the construction of the Bonneville Dam.'

"There has been submitted to the Department of the Army a letter from the Pacific Power & Light Co., Portland, Oreg., dated June 23, 1947, which shows that for the years 1938, 1939, and 1940 a total of 12,005,000 feet of logs were handled by its rollway at the mouth of the White Salmon River near where the claimant's wharf was formerly located. The Pacific Power & Light Co. further stated its rollway was leased on a flat rental basis during the year of 1941 and that, consequently, it has no record of the number of feet of logs handled at said rollway during that year.

"There has also been submitted to the Department of the Army a letter from the Columbia River Log Scaling and Grading Bureau, Portland, Oreg., dated June 24, 1947, which states that said Bureau had scaled at Underwood, Wash., from January 1, 1942, to June 14, 1947, a total of 147,101,371 feet of logs, which were boomed and rafted into the Columbia River at that point. In another letter, dated January 24, 1949, said Bureau stated that it had scaled at Underwood, Wash., from January 1, 1948, to December 31, 1948, a total of 34,300,990 feet of logs, which also were boomed and rafted into the Columbia River.

"It does not appear that anyone other than the Pacific Power & Light Co. and the lessee of its rollway, located near the mouth of the White Salmon River, has been engaged in the log booming business in the Underwood, Wash., area.

"It, therefore, appears from the foregoing statements of the Pacific Power & Light Co. and the Columbia River Log Scaling and Grading Bureau that during the years 1938 to 1948, inclusive (excluding the year of 1941 and the period from June 15, 1947, to December 31, 1947, for which periods no record has been furnished), there have been boomed and rafted on the White Salmon River near Underwood, Wash., and near the point where Miss Glesener's wharf was formerly located, a total of 193,407,361 feet of logs.

"The claimant contends that if she had been permitted to continue in the business of booming and rafting logs on her leased property on the Columbia River during the years 1938 to 1948, inclusive, she would have boomed at least one-half of the logs which were handled at the rollway of the Pacific Power & Light Co. during those years, or a total of 96,703,680 feet of logs (one-half of 193,407,361), and that

she would have received a profit therefrom of 50 cents per 1,000 feet, or a total of \$48,351. While this contention may be true, it, of course, is based upon the assumption that the claimant, if in business would have received at least one-half of the booming and rafting business in the Underwood, Wash., area after the completion of the construction of the Bonneville Dam. It would seem that since the claimant's facilities were situated on the Columbia River they were more advantageously located for the booming and rafting of logs than the rollway of the Pacific Power & Light Co. However, taking into consideration the possibility of better management on the part of the Pacific Power & Light Co. (although this is not proved by any evidence), it is believed that an award to the claimant on the basis of 50 percent of the logs handled at the rollway of the Pacific Power & Light Co. during that 11-year period would be somewhat excessive. It appears that the claimant boomed and rafted 21,287,423 feet of logs during the years 1928, 1929, and 1931, or an average slightly in excess of 7 million feet of logs per annum, and that her business was progressively increasing each year during the years immediately preceding the destruction of her business. It, therefore, may reasonably be assumed that her business during the years 1938 to 1948, inclusive, if she had been permitted to remain in business during those years, would have amounted to at least an average of 7 million feet of logs per annum, or a total of 77 million feet of logs. Upon a conservative estimate she would have realized a profit of 50 cents per 1,000 feet of logs during those 11 years, or a total of \$38,500. The Department of the Army, therefore, believes that any award granted to the claimant under this item of her claim should be limited to the sum of \$38,500.

"In the light of the foregoing facts it is believed that the damages sustained by this claimant may be fairly appraised as follows:

Destruction of wharf, road, and log boom-----	\$8, 391
Damages to home, facilities, and land-----	7, 000
Damages on account of loss of business from 1935 to 1937, inclusive, while the Bonneville Dam was under construction-----	13, 650
Loss of prospective business as a result of the construction of the Bonneville Dam-----	38, 500
Total-----	67, 541

"The Department of the Army, accordingly would have no objection to the enactment of this bill if it should be amended to provide for an award to the claimant in an amount not exceeding the sum of \$67,541."

In its report to the Congress on this legislation (S. 469), the Department of Justice stated:

"If the instant claim were to be considered on the same basis as the others, this claimant [Cathryn A. Glesener] would receive the amount necessary to reestablish her business. However, it was not possible for her to relocate her business until after the completion of the project, for which reason a similarly equitable solution might be reached in this case by placing a valuation upon the wharf, private road, and log boom as of the time of their destruction. To compensate her for other than these items would be inequitable since that would afford claimant a better position than would be obtained had she been legally entitled to compensation. If the bill should be amended so as to provide for the payment of a reasonable sum based upon this sug-

gestion, the Department of Justice would have no objection to its enactment."

In its report on this measure, the Committee on the Judiciary, Senate of the United States (S. Rept. 1247, 81st Cong., 2d sess., p. 6 (1950)), stated:

"After careful consideration, the committee is inclined to accept the figures set forth by the claimant [\$84,792] as being the figures which correctly show the loss sustained by her. While it is noted that the Department of Justice takes the view that there should be no compensation for anything other than the wharf, private road, and log boom, the committee agrees with the Department of the Army that this is an instance wherein the claimant should be compensated for all of the damages suffered, and recommend that the bill, S. 469, as amended, be considered favorably."

In its report on the measure (S. 469) the Committee on the Judiciary, House of Representatives (H. Rept. 1977, 81st Cong., 2d sess., p. 2 (1950)), stated:

"For the reasons stated in Senate Report 1247, the Judiciary Committee of the Senate felt the claimant was entitled to the full amount requested; namely, \$84,792, and on January 30, 1950, reported the bill for that amount. However, when the bill (S. 469) was considered by the Senate, an amendment was adopted which struck out the amount proposed by the committee (\$84,792), and inserted in lieu thereof: '\$36,441, with interest at 4½ percent from January 1, 1938, to the date of enactment of this act.'"

"The figure \$36,441 was arrived at by allowing claimant the first three items of damage as set forth in her breakdown above [supra]. To these three items would be added 4½ percent interest to fully compensate her contemporaneously with the loss sustained.

"It should be noted that the bill (S. 469) as thus amended and passed by the Senate excludes any amount for loss of prospective earnings after the completion of the Bonneville Dam. Your committee feels that claimant here has been damaged and that she should be compensated by the Government for such damage. Your committee is of the opinion that the bill as passed the Senate and explained herein will fairly compensate the claimant and therefore concurs in the recommendations of the Senate."

Action on S. 469, for the relief of Cathryn A. Glesener, resulted in "Private Law 477, 81st Congress, chapter 215, 2d session," approved May 29, 1950 (64 Stat. A 52). That act provided:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Cathryn A. Glesener, of Underwood, Washington, the sum of \$36,441, with interest at 4½ per centum from January 1, 1938, to the date of enactment of this Act, in full satisfaction of her claims against the United States for compensation for (1) the destruction of a log wharf and boom on the north side of, and extending into, the Columbia River, near Underwood, Washington, by the United States Engineers in 1937 in connection with the construction of the Bonneville Dam; (2) losses incurred by reason of the depreciation in value of shore property, improvements and facilities as a result of the destruction of such log wharf and boom; and (3) loss of earnings as a result of the

destruction of such log wharf and boom and the loss of business from 1935 to 1937, inclusive, while the Bonneville Dam was under construction: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

Pursuant to this act, Miss Glesener was paid \$56,788.56, including \$20,347.56 interest.

The present bill, H. R. 6448, 85th Congress, would authorize payment of the amount of \$70,031.38 in addition to the payment of \$56,788.56 authorized in 1950. The additional payment proposed is to compensate for the following in connection with the construction of the Bonneville Dam:

"(1) The damage caused to her leasehold rights in certain shorelands, located on the north side of and extending into the Columbia River, near Underwood, Wash.

"(2) The damages sustained by her as the result of the destruction of her rafting and booming business at such leasehold property by the construction of said dam."

Relative to the lease(s) in this case the Department of Natural Resources, Olympia, Wash., on July 23, 1957, stated:

"You will note from the record that Miss Glesener has held a portion of these tidelands under lease since October 1, 1926, and the balance since July 5, 1935.

"Under our statutes, shorelands of this class may be leased to any person, firm, or corporation for booming purposes. At the expiration of any booming lease, issued under the provisions of this law, the lessee, his successors, or his assigns, shall have the right to re-lease the lands covered by his original lease for a further term, not exceeding ten years, at such rental and upon such terms and upon such conditions as may be prescribed by the Commissioner of Public Lands.

"The shorelands in question extend from the line or ordinary high water out to the line of navigability. The annual rental of booming leases on shorelands is determined on the basis of 6 percent of the value of the shorelands as determined by this office. To date, the State has received a total of \$2,052.90 from rental of these lands.

"We are enclosing herewith a tabulation showing the annual rental * * *"

The tabulation is set forth in pertinent part as follows:

Date	Term (years)	Annual rental	Date	Term (years)	Annual rental
Nov. 17, 1926.....	5	\$15	July 5, 1940.....	5	\$35
July 6, 1929.....	3	24	July 5, 1945.....	5	35
July 6, 1932.....	3	25	Nov. 17, 1931.....	5	15
July 6, 1935.....	5	25	Nov. 17, 1936.....	5	15
July 6, 1940.....	5	25	Nov. 17, 1941.....	10	15
July 6, 1945.....	5	25	July 5, 1950.....	10	75
July 5, 1935.....	5	35			

Relative to this matter, the following letters have been submitted by Miss Glesener and are deemed pertinent:

Letter to Miss Cathryn A. Glesener from Ralph Walstrom, of Holbrook-Walstrom, property counselors, dated May 29, 1957:

"This is a claim of Cathryn A. Glesener of Underwood, Wash., against the United States for damages caused to her leasehold rights on certain shore lands located on the north side of, and extending into, the Columbia River near Underwood, State of Washington, this damage occasioned by the United States engineers in the construction of the Bonneville Dam.

"In order to clearly understand the facts of the case, it should be pointed out that this property is located in the heart of a rich timber area in the State of Washington. Here timber is cut into logs and trucked to the most accessible point on the Columbia River where the logs are tied together in a large raft. Then the logs are propelled by the current and tugboats to the sawmills where they are sawed into lumber.

"From the location of this property, many miles inland, millions of feet of timber have been sawed, and many more feet are still available as the records will indicate. The claimant, recognizing the potential of the area, in 1926 entered into a lease with the State of Washington for this tract of land which is located 37 miles east of where the Bonneville Dam has been constructed. This was a very important location both to the loggers and to the claimant since the area was a cove alongside the Columbia river with ample room, well protected, and where the logs could be hauled down from the forests and unloaded directly from the truck into the pond without damaging the logs.

"The logs were collected in this cove behind a boom where there was never more than 4 feet of water over the surface. The booms held the logs until formed into rafts and were then taken down the river. Because of its location in the heart of the logging area and the fact that it was a protected cove and shallow water, it proved to be the best location on the Columbia River for the collection of logs. It also proved to be a monopoly for this type of business because the closest point that was available as competition for this log dump was at Stevenson, Wash., 25 miles west of this property. Due to water depth, riverbanks, and protected areas offered by this property there were no similar sites closer than Stevenson. Thus it enjoyed a monopoly for the area.

"The construction of the Bonneville Dam with a height of 72 feet backed up the waters of the Columbia River completely submerging the property some 37 miles to the east. The depth of the water, the fact that it was rough, no longer being protected in a cove, and the inaccessibility for logging trucks made any future operation at this point impossible.

"It should be pointed out that prior to the construction of Bonneville Dam the petitioner had the only logical log dump within 25 miles, but after the construction of the Bonneville Dam which submerged her property, the high waters created other facilities such as that in the White Salmon River. However these facilities are not as good in that the logs must be dumped from considerable height often causing damage to the timber.

"This property has been leased from the State of Washington continuously since 1926. The lease is still in effect. It is a simpler matter today to compute the rental value of the property than it was at the time of the construction of the Bonneville Dam which required projecting the volume of logs which would use the facilities. Now we have actual records year by year of the logs dumped in the area which of necessity, because of the monopoly which existed prior to the construction of the dam, would be dumped in here.

"First, let us consider the period from 1938 to December 31, 1956. The purpose of confining the analysis to these dates is that they are no longer speculative because actual figures of logs boomed during this period are available from the official files of the Columbia River Log Scaling and Grading Bureau. This does not consider that the lease might continue for many years since there is ample timber supply in the area but confines the damage of leasehold to these specific dates.

"The value of the leasehold, also known as the lessee's interest is the difference between the economic rent and the contract rent required by the State of Washington which is sometimes called the bonus value in a lease.

"Evidence clearly shows that this property had a monopoly for all of the logs boomed in a 25-mile area. The creation of a new facility in the White Salmon River and the figures thereof by the Columbia River Log Scaling and Grading Bureau set forth below indicate the volume of logs that would have been boomed through this leased facility. These figures, supplied by the bureau, are as follows:

	Logs boomed (feet)	Price per thousands	Gross earnings
1938 to 1947, inclusive.....	170,956,603	\$1.25	\$213,695.75
Jan. 1, 1948, to Dec. 31, 1948.....	34,300,990	1.50	51,451.49
Jan. 1, 1949, to Dec. 31, 1949.....	38,638,500	1.50	57,957.75
Jan. 1, 1950, to Dec. 31, 1956.....	105,927,398	1.75	185,372.95
Total.....	449,823,491	-----	508,477.94

"Thus the gross earning capacity of the lease in an 18-year period is \$508,477. It has been established that operating expenses, according to the Columbia River Log Scaling & Grading Bureau and others, approximates 35 percent. Adding 15 percent for lease payments and replacement of the physical facilities gives a total of 50 percent for operating costs and expenses and 50 percent for the net earnings of the lease. This, rounded, is \$254,000 the net earnings of the lease during the period from 1938 to December 31, 1956.

"The question then resolves itself to the simple statement of 'What would a purchaser in 1938 pay for the chance of earning \$254,000 on the lease in an 18-year period?' Two hundred and fifty-four thousand dollars in 18 years is \$14,000 per year. Capitalized on a high risk rate of 10 percent for the 18-year period it indicates a minimum value of \$114,800 in 1938. Or, in the language of the layman, a purchaser would have paid a minimum of \$127,000 to earn \$254,000 in 18 years. Is it any wonder then that Mr. Duane Autzen, general manager of the Portland Lumber Mill, a user-buyer, stated that he would have been interested in a purchase price between \$175,000 and \$225,000? This only tends to substantiate the value found.

"A user-buyer such as Mr. Autzen or other lumber concern would not demand as high a return rate as a speculator. Such a buyer would not think in terms of 18 years of use but rather a minimum of 25 years from 1938. This on a 6-percent rate indicates a value of (\$14,000 per year capitalized at 6 percent for 25 years) \$179,000.

"Thus, in summary, the leasehold if not flooded would have produced in the past 18 years, for which we have accurate records, net earnings of \$254,000. Any investor with the opportunity to double his money would have paid \$127,000, or a user-buyer who could control the log supply would have paid a minimum of \$179,000. There has always been a great demand for this type of facility; therefore it is reasonable to assume that the market value of the leasehold in 1938 was \$179,000 with the lower figure constituting a distressed sale price."

Copy of signed statement of Vincent J. Kelly, assistant secretary, Columbia River Log Scaling & Grading Bureau, Portland, Oreg., dated August 22, 1952:

"Total of logs boomed in White Salmon River at Underwood, Wash., compiled with reference to dates and volume as set forth hereon.

	Percent	Logs boomed (feet)	Price per thousand	Gross earnings
1938 to 1947, inclusive.....		170,956,603	\$1.25	\$213,695.75
Jan. 1 to Dec. 31, 1948.....		34,300,990	1.50	51,451.49
Jan. 1 to Dec. 31, 1949.....		38,638,500	1.50	57,957.75
Jan. 1, 1950, to Dec. 31, 1956.....		105,927,398	1.75	185,372.95
Total.....		449,823,491		508,477.94
Cost of operation.....	35			177,967.28
Net profit.....	65			330,510.66
Total.....				508,477.94

"Final Date December 31, 1956."

Copy of letter (November 25, 1952) to Miss Catherine A. Glesner from Duane Autzen, general manager, Portland Lumber Mills, division of Portland Manufacturing Co., Portland, Oreg.:

"If you were still in control of the property you had prior to the building of Bonneville Dam our company would be interested in a purchase or lease of the same. We feel that with the past 10 years of regular production we could have paid you a yearly rental of between \$10,000 and \$20,000, or if it were for sale we could pay between \$175,000 and \$225,000.

"As I have told you in the past, our company is quite active in the upper river areas and have so far been unable to find suitable rafting and booming grounds to get our much needed log supply. There is a good volume of Government and private timber in that area which we could purchase if we had suitable facilities for obtaining same. Therefore, we wish you were able to help us out with a suitable piece of property to lease or buy for rafting and booming purposes."

Copy of signed letter to Miss Cathryn A. Glesener from F. D. Hobi, logging manager, St. Paul & Tacoma Lumber Co., Tacoma, Wash., dated April 17, 1957:

"I have gone over all the material enclosed with your two letters and it appears to me you have your case well in hand insofar as the congressional bill H. R. 6448 is concerned.

"I fail to see how a new appraisal of the damage suffered by you would do you any good at this late date. The bill has already been introduced in Congress and you certainly seem to have presented ample evidence to substantiate your modest claim of \$70,031.38.

"Your appraiser, Mr. Aard Ady did not show what his conclusion as to your losses amounted to. As I see it, your losses totaled both the loss in profits shown as \$247,500 and the loss of \$100,000 in your leasehold, which makes a total of \$347,500.

"To make an intelligent appraisal which could be defended in court the appraiser would have to be a man who had seen your log wharf and could testify that it would remain operable over the years since 1938 without any unusual maintenance or operation hazards which might decrease your profit margin. He would also have to be familiar with all the shoreline along the Columbia River before the Bonneville Dam flooded the area and be able to testify as to other dumping or boom possibilities that would have been competitive with your leasehold had the Bonneville Dam not been built. In other words, the appraisal would have to be made on the basis of what he saw and determined before the dam was built and the area flooded. The man I had in mind could not make such an appraisal. All he could do would be to say that he agrees with your statements and your claims and with those of your appraiser Mr. Ady. His opinion would not have much weight unless he had some big name like Mason, Bruse & Gerard to impress Congress.

"I am mailing you herewith by insured mail, return receipt requested, all the papers you have enclosed in the two letters which I received."

Relative to this matter, Miss Cathryn A. Glesener in a hearing held on Wednesday, June 19, 1957, before the House of Representatives Subcommittee No. 2, of the Committee on the Judiciary, stated:

"* * * If I could have kept this operation I would have been a millionaire out of that operation, had it continued since 1926 (p. 50).

"Mr. LANE. Now for the purpose of the record will you tell us how much you have really lost as a result of the damage to your property?

"Miss GLESENER. Yes. That was the first bill, which went through" (p. 68).

Under date of August 27, 1954, the Department of the Army in its report to the chairman, Committee on the Judiciary, House of Representatives, on H. R. 3037, 83d Congress, a similar bill for \$70,031.38 covering leasehold rights and property stated:

"This Department continues to be of the opinion that Miss Glesener should be compensated in full for the loss of her facility. However, the evidence presented subsequent to the enactment of S. 469 (Private Law 477, 81st Cong.) makes it clear that the construction of the Bonneville Dam made resumption of log booming and rafting operations at her site entirely impractical. Accordingly, the basis of compensation should be the value of the facility as a whole in 1935 immediately prior to the time when construction of the dam was undertaken rather than the value of the physical improvements and loss of subsequent business or prospective earnings.

"In 1935, a fair valuation of the facility would have been arrived at by estimating its probable net income for a reasonable time based on past results. The total of such reasonably to be expected income would then be reduced further by applying a discount rate representing the present value of money to be received in the future. The result would have reflected a fair appraisal as of 1935 of the overall value of the facility which was destroyed and which, under the circumstances, could not be rebuilt.

"It is the opinion of this Department that 15 years would be a reasonable period upon which to assess any reasonably to be expected income from the facility and upon which to base any valuation of property such as that involved here. Information furnished on behalf of Miss Glesener indicates (as stated in this Department's report on S. 469, 81st Cong.) that 50 cents per thousand feet of lumber boomed and rafted was considered to be a reasonable forecast of income after operating expenses. Such information further indicates that, during the years 1928 to 1931, inclusive, an average of 7 million feet of lumber was boomed and rafted annually through Miss Glesener's facility. It should be noted that no results appear to be obtainable for the depression years 1932 and 1933, which tends to weight the figures in Miss Glesener's favor. At the rate of 7 million feet per year, an operating profit of 50 cents per thousand feet results in an annual income after expenses of \$3,500. Over a period of 15 years of stable operations, Miss Glesener would therefore have received a total of \$52,500 ($\$3,500 \times 15$).

"Under normal circumstances, the total of \$52,500 would be reduced by applying a discount rate representing the value of income to be received in the future and the result would represent the value of the facility in 1935. As that 'future' is now in the past, it would be correct to then allow interest on the reduced amount. However, the net result would be that one would cancel the other, and an equitable basis for settlement could be reached without making any deduction for the discount of 'future' earnings if an allowance for interest is likewise eliminated.

"The net operating income referred to above would have been after the allowance of a reasonable amount for maintenance and depreciation of physical improvements. In the period of time being considered, it is highly unlikely that there would be any residual value to the improvements here involved and entirely probable that they would in fact have been fully depreciated as an operating expense and completely 'written off.' Accordingly, the value of the then-existing physical improvements should not be considered an element of damages in this method of computation.

"Private Law 477, 81st Congress, awarded to Miss Glesener the following:

For destruction of physical improvements.....	\$8,391.00
For depreciation in value of home, adjacent facilities, and land associated with but not a part of, the log booming and rafting facility--	14,400.00
For loss of business from 1935 to 1937.....	13,650.00
Subtotal.....	36,441.00
Interest at $4\frac{1}{2}$ percent.....	20,347.56
Grand total.....	56,788.56

"Although the depreciation in value of the home, adjacent facilities and land appears to have been associated with the destruction of the log booming and rafting facility, such depreciation was only incidental thereto. However, the physical improvements, for the destruction of which the sum of \$8,391 was awarded, formed a part of the log booming and rafting facility. For the reasons stated above, the amount already awarded for their destruction should be deducted in making any further allowance under the method of computation which this Department considers equitable. As any prospective profits or business for the years 1935 through 1937 also would be taken into consideration in such compensation, the amount of \$13,650, awarded for loss of business during those years, also should be deducted. These 2 sums (\$8,391 and \$13,650) total \$22,041. Also, because of the different method of computation and for the reasons stated in the preceding paragraphs, the amount already awarded as interest on these portions of the claim, \$12,307.03 (\$20,347.56 times \$22,041/\$36,441), should also be deducted before arriving at the additional award. It is the opinion of this Department that the total of these amounts already paid to Miss Glesener, viz: \$34,348.03, should be deducted from the valuation of her facility (\$52,500), thereby leaving an additional amount of \$18,151.97 in which she should be compensated."

In *Karlson v. United States* (82 F. 2d 330 (8th Cir., 1936)), the court stated:

"* * * The measure of compensation to which they were entitled was the difference between the fair market value of their lands just before and the fair market value just after the imposition of the easement. *Olson v. United States*, supra (292 U. S. 246, 54 S. Ct. 704, 78 L. Ed. 1236); *Olson v. United States*, supra (67 F. (2d) 24, 27). * * *"

"'Fair market value' is the amount that would, in all probability, have been arrived at between an owner willing to sell and a purchaser desiring to buy, and, in ascertaining that figure, 'there should be taken into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining.' *Olson v. United States*, supra (292 U. S. 246, 257, 54 S. Ct. 704, 709, 78 L. Ed. 1236). See, also, *Olson v. United States* (C. C. A.) 67 F. (2d) 24, 30."

In *United States v. 10,245 Acres of Land, More or Less, etc.* (50 F. Supp. 470 (N. D., 1943)), the District Court stated:

"* * * Implicit in the term 'fair market value' is the assumption of a situation in which both the buyer and seller are informed concerning all the relevant factors reasonably to be considered in determining fair market price. Judged by these standards, the question to be answered here is a very simple one. It is how much would an informed buyer be willing to pay the defendant for his inchoate title to the lands here involved [at time of taking]?"

Certainly, a purchaser bargaining for Miss Glesener's interests prior to the construction of the Bonneville Dam, in attempting to arrive at "fair market value" would ascertain, study, and carefully weigh the provisions of the "permit" under which she operated and which constituted the hub of her operations.

In *Olson v. United States* (292 U. S. 246 (1934)), the Supreme Court stated:

"Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land but is to be arrived at upon just consideration of all the uses for which it is suitable."

On February 11, 1943, Miss Glesener stated "I had planned before the war to turn [my property] into a hunting and fishing lodge"; and on July 5, 1945, it was further stated "This lodge is large enough for a clubhouse and has ground space ample for guest cabins, with complete privacy afforded owing to so many beautiful fir trees, and has ample water for swimming pool and all other purposes as I control the water right." Thus, it appears that uses other than logging and booming have been entertained incident to the subject property in the past.

Relative to legal aspects it is stated:

"If the owner of property uses it himself for commercial purposes, the amount of his profits from the business conducted upon the property depends so much upon the capital employed and the fortune, skill, and good management with which the business is conducted, that it furnishes no test of the value of the property. It is, accordingly, well settled that evidence of the profits of a business conducted upon land taken for the public use is not admissible in proceedings for the determination of the compensation which the owner of the land shall receive. The profits of a business are too uncertain, and depend on too many contingencies to safely be accepted as any evidence of the usable value of the property upon which the business is carried on. Profits depend upon the times, the amount of capital invested, the social, religious, and financial position in the community of the one carrying it on, and many other elements which might be suggested. What one man might do at a profit, another might only do at a loss. That the owner has made profits in his business in the past is no indication that he will make them in the future.

"It has been said that it is the land which is appropriated and not the business conducted thereon. While it is proper to show, as bearing on the value of the property, that it is peculiarly adapted for any particular business, the success of an enterprise does not depend upon its location alone, but rather upon the skill and ability of the proprietor, and the manner in which he conducts his business. One will often succeed where another will fail. In one case the court said:

"The truth is the amount of actual net revenue does not determine the value of the land in every case. The revenue would vary according to the industry, skill and wisdom of the person cultivating the land. Its net revenue, assuming reasonable skill in cultivation and management, would be the criterion, so far as that element alone is concerned. But other elements, such as the state of the market, the demand and supply of land of the character in question, the prospects of advance, and perhaps other things, would ordinarily affect the question of value and fix it at a sum different from that produced by capitalization of net revenue. The actual market value is the thing to be determined and while net revenues should be considered, it does not, in general, furnish a conclusive measure of such market value."

"It has been held, however, that evidence of the character and amount of the business conducted upon the land may be admitted as tending to show one of the uses for which the land is available. This character and adaptability, reflecting the value of the land, may be shown by a consideration of the fact that the business carried on at the site is profitable as well as the length of time that it has been successfully conducted there. However, the courts ordinarily refuse to follow this distinction to the extent of allowing proof of the amount or volume of the business conducted on the property. Similarly, the precise quantum of profits cannot be shown (Nichols, *Eminent Domain* (3d edition, 1954) vol. 5, sec. 19.3)."

It is also stated:

"* * * When a piece of real estate upon which an established business is carried on is taken for the public use, it often happens that the proprietor of the business is unable to secure an equally available site in the neighborhood. By the interruption of his business and the removal thereof to a considerable distance away, he may lose the greater part of his customers and never be able to regain his standing in the business community. If he is the owner of the land taken the jury may partly compensate him by giving him a liberal award for the land, but if he is a mere tenant, especially if there is an eminent domain clause in his lease, he may not receive a dollar.

"While it may be an added element of value to a particular piece of land taken, a business is less tangible in nature and more uncertain in its vicissitudes than the rights which the Constitution undertakes to protect absolutely. Although in some cases the destruction of an established business works a much greater hardship than many injuries for which the Constitution makes compensation necessary, the diminution of its value is considered a vaguer injury than the type of taking or appropriation with which the Constitution deals. A business might be destroyed by the construction of a more popular street into which travel was diverted or by a change in the location of a railroad station, a subway entrance, or even a transfer point for streetcars, as well as by competition, but there would be as little claim in the one case as in the other.

"The case is no different when the business is destroyed by taking the land on which it was conducted. It is well settled that when land occupied for business purposes is taken by eminent domain, the owner or occupant is not entitled to recover compensation for the destruction of his business or the injury thereto by its necessary removal from its established location. Furthermore, as the business is something entirely distinct from the market value of the land upon which it is conducted, it is not considered in determining the value of such land except so far as it illustrates one of the uses to which the land taken may be put. The reasons for this rule are doubtless sound. Any modification of this rule might lead to countless claims for damages, some fraudulent and all difficult to appraise fairly. But unquestionably the rule sometimes works great hardship" (Nichols, *Eminent Domain* (3d edition, 1954) vol. 4, sec. 13.3).

The Congress in 1950 determined that the "claimant here has been damaged and that she should be compensated by the Government for such damage." Accordingly, "The figure \$36,441 was arrived at by

allowing claimant the first three items of damage as set forth in her break-down above:

Destruction of wharf, road, and log boom-----	\$8, 391
Damages to home, facilities, and land-----	14, 400
Damages on account of loss of business from 1935 to 1937, inclusive, while the Bonneville Dam was under construction-----	13, 650
Total-----	36, 441

To these three items would be added $4\frac{1}{2}$ percent interest to fully compensate her contemporaneously with the loss sustained." Accordingly, Miss Glesener was paid \$56,788.56, including \$20,347.56 interest.

Reasonable men may very well differ on the value of Miss Glesener's leasehold interest in this case. Some may agree with the claimant that she would have been a millionaire; some may agree with Mr. Ralph Walstrom of Holbrook-Walstrom, property counselors, on the valuation of \$179,000; some may contend that since Miss Glesener still has the lease, her leasehold interests remain intact in her, and she should not be compensated for what was not taken; and some may contend that she is seeking additional damages arising out of the same cause and for what must be regarded as the same grounds irrespective of the different wording in which the grounds are stated.

As was pointed out in the Department of the Army's report on H. R. 3037, 83d Congress, *supra*, that:

"This Department continues to be of the opinion that Miss Glesener should be compensated in full for the loss of her facility. However, the evidence presented subsequent to the enactment of S. 469 (Private Law 477, 81st Cong.) makes it clear that the construction of the Bonneville Dam made resumption of log booming and rafting operations at her site entirely impractical. Accordingly, the basis of compensation should be the value of the facility as a whole in 1935 immediately prior to the time when construction of the dam was undertaken rather than the value of the physical improvements and loss of subsequent business or prospective earnings."

This Department continues to be of the opinion that Miss Glesener should receive additional compensation in the amount of \$18,151.97, representing the difference between the amount already awarded to her for the facility involved and the value of that facility as of that date. (See p. 22.)

It is noted that the Congress in its action with respect to the initial legislation in this case, S. 469, 81st Congress (subsequently enacted into Private Law 477, 81st Cong., *supra*), awarded "the sum of \$36,441, with interest at $4\frac{1}{2}$ percent from January 1, 1938, to the date of enactment of this act, * * *." [Italic added.] The addition of interest was made to fully compensate Miss Glesener "contemporaneously with the loss sustained." Incident to current relief legislation, the Department of the Army deems it appropriate to insert such interest provision in connection with the sum of \$18,151.97 recommended herein.

The Department of the Army is also of the view that the text of the subject bill, H. R. 6448, should be amended to read as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Cathryn A. Glesener, of Underwood, Washington, the sum of \$18,151.97, with interest at 4½ per centum from January 1, 1938, to the date of enactment of this Act, in full satisfaction and final settlement of all her claims against the United States for compensation arising out of damages to her property and leasehold rights in certain shorelands, located on the north side of and extending into the Columbia River, near Underwood, Washington, caused by the United States incident to or resulting in any way from the construction of the Bonneville Dam, including, but not restricted to the destruction of her rafting and booming business at such leasehold property: *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

Provided that the bill is so amended, the Department of the Army recommends that it be favorably considered by the Congress.

Incident to the preparation of this report, this Department has carefully reviewed all evidence previously submitted in the case and has carefully considered evidence currently submitted. This currently submitted evidence consists of a number of photographs (10 small, 11 medium, and 2 large; total 23), and a transcript of the hearing held on this bill under date of Wednesday, June 19, 1957, by the House of Representatives, Subcommittee No. 2, of the Committee on the Judiciary. This currently submitted evidence also consists of a folder with 8 documents submitted to the Department by Miss Glesener on June 19, 1957, and 79 documents received by the Department from Miss Glesener on July 23, 1957.

Previous reports by the Department of the Army on this case are as follows: Report to the chairman, Committee on the Judiciary, House of Representatives, dated August 19, 1949, on H. R. 3325, 81st Congress; report to the Attorney General, dated August 23, 1949, on S. 469, 81st Congress; report to the chairman, Committee on the Judiciary, House of Representatives, dated August 27, 1954, on H. R. 3037, 83d Congress; and report to the chairman, Committee on the Judiciary, United States Senate, dated July 16, 1956, on H. R. 1216, 84th Congress.

The cost of this bill according to its terms, if enacted, will be \$70,031.38, or, if amended as herein recommended, the cost will be \$18,151.97, with interest at 4½ percent from January 1, 1938, to the date of enactment of this act.

The Bureau of the Budget advises that there is no objection to the submission of this report.

The enclosures to your letter are returned herewith as requested.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

DEPARTMENT OF THE ARMY,
Washington, D. C., February 28, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter dated January 27, 1958, requesting a supplemental report on H. R. 6448, 85th Congress, a bill for the relief of Cathryn A. Glesener. This report will reflect consideration given to the bill in the light of additional evidence furnished to the Department by Miss Glesener since the earlier report submitted to you on October 23, 1957.

A chronology of some of the occasions on which Miss Glesener's claim has received legislative and departmental consideration is set forth for your information:

(1) In the 80th Congress, S. 2294, a bill for the relief of Cathryn A. Glesener was introduced in the amount of \$126,811, to compensate Miss Glesener for the destruction of a log wharf and boom located on the Columbia River that resulted from the construction of the Bonneville Dam; for losses incurred by reason of depreciation in value of her shore property improvements, and facilities as a result of the destruction of such log wharf and boom; and her loss of earnings as a result of the destruction of her business.

(2) At the request of the Attorney General, the Department of the Army submitted a report to The Attorney General on S. 2294; this report was unfavorable.

(3) In the 81st Congress, S. 469, an identical bill, was introduced for the relief of Miss Glesener.

(4) At the request of the Committee on the Judiciary, United States Senate, the Department of the Army, on August 19, 1949, after consideration of additional evidence, submitted through the Attorney General a favorable report on S. 469, provided it was amended to compensate Miss Glesener as follows:

Destruction of wharf, road, and log boom-----	\$8,391
Damages to home, facilities, and land-----	7,000
Damages on account of loss of business from 1935 to 1937, inclusive, while the Bonneville Dam was under construction-----	13,650
Loss of prospective business as a result of the construction of the Bonne- ville Dam-----	38,500
Total-----	67,541

(5) On January 30, 1950, the Committee on the Judiciary, United States Senate, reported favorably on S. 469, provided it were amended to compensate Miss Glesener in the amount of \$84,972 (S. Rept. 1247, 81st Cong., 2d sess.).

(6) On April 19, 1950, the United States Senate passed S. 469 with an amendment offered from the floor reducing the compensation to Miss Glesener to the amount of \$36,441, with interest at 4½ percent from January 1, 1938, to the date of enactment of S. 469. (96 Congressional Record 5377, 5378 (1950)).

(7) On May 3, 1950, the Committee on the Judiciary, House of Representatives, reported favorably on S. 469 without further amendment (H. Rept. No. 1977, 81st Cong., 2d sess.), and, on May 29, 1950, it was approved by the President becoming Private Law 477, 81st Congress (Private Law 477 provided compensation to Miss Glesener

of \$36,441 with 4½ percent interest, totaling \$56,788.56) (64 Stat. A52).

(8) A supplemental relief bill was introduced on February 12, 1953, H. R. 3037, 83d Congress, for the relief of Cathryn A. Glesener, in the amount of \$70,031.38, as compensation for the damage to her leasehold rights in certain shorelands on the Columbia River caused by the construction of the Bonneville Dam and damages sustained by her as the result of the destruction of her rafting and booming business.

(9) The Department of the Army was requested to submit a report on H. R. 3037, and, on August 27, 1954, submitted its report to the chairman, Committee on the Judiciary, House of Representatives, favoring enactment of the legislation provided it were amended to compensate Miss Glesener in the amount of \$18,151.97, for damage to her property and leasehold rights in certain shorelands on the Columbia River, but not restricted to the destruction of her rafting and booming business. No action was taken by the 83d Congress on H. R. 3037.

(10) In the 84th Congress another identical supplemental bill, H. R. 1216, was introduced for the relief of Miss Glesener.

(11) The Committee on the Judiciary, House of Representatives, reported favorably on H. R. 1216 (H. Rept. 685, 84th Cong., 1st sess.), which was amended to provide compensation in the amount of \$18,151.97, and the bill passed the House of Representatives, as amended, on June 7, 1955.

(12) In June 1956 the Committee on the Judiciary, United States Senate, submitted additional evidence relating to H. R. 1216 to the Department of the Army and requested a supplemental report on the bill.

(13) The additional evidence was considered by the Department, and, on July 16, 1956, a supplemental report was submitted to the chairman, Committee on the Judiciary, United States Senate, in which the Department of the Army adhered to the views expressed in its report on H. R. 3037, 83d Congress.

(14) On March 27, 1957, the subject relief bill, H. R. 6448, was introduced in the 85th Congress, which was identical to the supplemental relief bills introduced in the previous two Congresses.

(15) Subcommittee No. 2, Committee on the Judiciary, House of Representatives, held a hearing on H. R. 6448, on June 19, 1957, which hearing was attended by a representative of this Department. The transcript of that hearing and other documentary evidence were forwarded by the committee to the Department on June 24, 1957, with a request for a supplemental report.

(16) On October 23, 1957, a supplemental report was submitted to the chairman, Committee on the Judiciary, House of Representatives, in which the Department recommended enactment of H. R. 6448 to provide for compensation to Miss Glesener in the amount of \$18,151.97, with interest at 4½ percent from January 1, 1938, to date of enactment of the bill.

Since the submission of the Department's last report Miss Glesener obtained and submitted additional evidence relating to her claim. This supplemental report will reflect the Department's consideration and views in connection with such evidence. The new evidence relates to three issues which Miss Glesener contends are not equitably considered in the report of October 23, 1957:

(1) Whether, upon completion of the Bonneville Dam, her wharf and boom constituted an obstruction and menace to navigation on the Columbia River.

(2) Whether the volume of her business upon which determination of her damages should be based grossly exceeded the average 7 million feet scaled per year; and

(3) Whether the measure of her damages should not, more equitably, be based upon a 22-year period rather than 15 years.

The first of these issues may not, in any way, be considered a new one. However, Miss Glesener has submitted two letters, dated November 29, 1957, and January 28, 1958, from Mr. Wade B. Patterson, Chief, Drafting Section, United States Army engineer district, Portland, Oreg., which relate to a detailed map of the pertinent area and upon which Mr. Patterson included further graphic details. The net effect of the technical information furnished by Mr. Patterson was summarized by him in his letter of November 29, 1957, as follows:

"The project width of the channel in the reach of Columbia River in the vicinity of Underwood is 300 feet. Before Bonneville the channel was about 225 feet farther toward Oregon in that reach, but it never was and is not now on the Oregon side of the river. The map which you sent to me and which is returned herewith does show both the Oregon and the Washington shores.

"The end of your wharf was in a sort of cove and was 750 feet clear of the north edge of the relocated 300-foot channel [shown]. That, of course, is the channel to be considered.

"I have indicated on your map to the best of my ability the information which your letters seem to call for. I have also shown a profile of the area. The 'after Bonneville' depth of 31 feet at the outer end of the wharf corresponds to a 4-foot depth before Bonneville. Inasmuch as I have no information concerning the pre-Bonneville elevations above low water on the old sand bar, I cannot give accurate depth of water now covering it, but estimating the maximum height of the bar as 10 feet above old low-water level, the present water surface (elevation 72) will cover the bar with a minimum of 17 feet of water.

"As will be seen, the Government meander line is not identical with any waterline, either high or low water."

The evidence may be characterized as cumulative and argumentative because a reference to House of Representatives Report No. 1977, 81st Congress, 2d session, will show that claimant long has contended her business was not an obstruction to navigation. The Department pointed out, see page 10 of House Report 1977, that the War Department had later determined that construction of a log boom on the shorelands leased by claimant from the State of Washington would not be an obstruction to navigation. This determination was among the cited reasons for which the Department recommended Miss Glesener be compensated. The Department has not altered its views in that regard.

Miss Glesener has submitted evidence in the form of pages which appear to have been ledger entries; a notebook entirely filled with unexplained penciled entries which probably are meant as a tally of logs, their length and diameter, raft numbers and the scaled footage; two adding machine tapes; other penciled business entries which purport to be "Boomage-approximates" of such former customers

who utilized Miss Glesener's facilities as "Ex Bldg Co.," "Other Pac. Log Co.," "Himans," "Turlay," "Miscellaneous," and others which are illegible; and a typed sheet entitled "Statement of Selling Scale of Logs Rafted During 1931 Through Booming Grounds Leased From Miss C. A. Glesener" containing entries of types of logs, raft numbers, and owners thereof, showing a total of "10,278,023" feet. The above-described partial business entries bear various dates from 1926 to 1931. Miss Glesener explains that these items were the only remaining records relating to the volume of business which were available. With Miss Glesener's interpretations of these fragmentary bits of evidence, and, possibly, a thorough understanding of log scaling and booming operations, it may be concluded that Miss Glesener's operation scaled and boomed considerably more than 7 million feet per year.

It must be noted that the claimant has sought previously to estimate her damages from "Loss of prospective business after dam was built, had she been allowed to remain in business." She has claimed \$48,351.50, and the method by which this amount was determined is quoted on pages 8 and 9 of the Department's report of October 23, 1957. From information then available, the Department determined in its report on H. R. 3037, 83d Congress, that an annual average of 7 million feet of lumber was boomed and rafted during the years 1928 and 1931. There was no evidence to indicate that this figure was inadequate until recently. However, the evidence Miss Glesener has produced now is not deemed sufficiently reliable or intelligible to permit a determination of what, if any, annual volume of business would be more correct and equitable than that used in the earlier assessment of damages. In the absence of better evidence the Department is constrained to adhere to its earlier recommendations.

Miss Glesener has submitted an affidavit executed January 17, 1958, by one William C. Crittenden. Affiant was formerly president and principal stockholder of the Express Building Co. which had been a major user of Miss Glesener's booming and rafting facilities. Affiant states, "* * * that at the time said wharf was removed, further large amounts of timber belonging to said corporation and to others in the vicinity of said wharf were still available for removal." Miss Glesener submits this affidavit to support an earlier statement, dated April 8, 1955, from the Assistant Secretary of the Columbia River Log Scaling & Grading Bureau of Portland, Oreg., to the effect that production of wood products was just beginning to develop when Miss Glesener's business was terminated; the timber on the Columbia River was the first to be logged; the natural trend was to extend farther into the main source of timber; the main supply of timber in that area has in the past been owned by the United States Forest Service; there were many tracts of virgin timber in the area to be logged which would continue as a source of supply for 25 years or longer. (This letter is quoted in H. Rept. 685, 84th Cong., 1st sess., at p. 8.) Therefore, Miss Glesener contends, to limit the period for which she should be compensated to 15 years is inequitable, because, in her opinion, a more equitable period is 22 years. The Department has previously expressed the opinion "that 15 years would be a reasonable period upon which to assess any reasonably to be expected income from the facility and upon which to base any valuation of property such as that involved here." A full and fair evaluation of all the evidence does not alter this view.

The Department has long considered Miss Glesener's claim meritorious. The Department has no other sources available for evidence to permit a more accurate and well-founded assessment of her damages. It is realized that the committee may have other and more reliable evidence, including Miss Glesener's further testimony, upon which it may better determine a fair result. Should the Congress conclude that the Department of the Army's determination of damages is inadequate, the Department would have no objection to an increased award in this case.

Miss Glesener has submitted a letter dated December 16, 1957, from the information officer, United States Department of the Interior, Bonneville Power Administration, Portland, Oreg., which included a condensed summary of results of operations for the Columbia River power system for fiscal years 1952 to 1957, inclusive. The summary reflects total revenues transferred to the account of the Bonneville Dam project was \$58,632,463, as of June 30, 1957. The Department of the Army does not consider this evidence sufficiently relevant to the merits of Miss Glesener's claim to warrant further comments thereon.

The cost of this bill according to its terms, if enacted, will be \$70,031.38, or, if amended as previously recommended by this Department, the cost will be \$18,151.97, with interest at 4½ percent from January 1, 1938, to the date of enactment.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

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